

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION**

JOSEPH ALLEN AKENS,

Movant,

v.

UNITED STATES OF AMERICA,

Respondent,

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No. 1:11CV186 RWS

MEMORANDUM AND ORDER

This matter is before me on movant's motion for relief from judgment under Rule 60(b)(2) of the Federal Rules of Civil Procedure. The motion is denied.

Movant purports to have newly discovered evidence that shows the Court's merits determination of whether his Missouri conviction for possession of a controlled substance with intent to distribute was a felony was incorrect. His "newly discovered evidence" is the state court docket sheet, which clearly shows that it was a felony conviction.


First, the Court finds the substance of the motion is properly characterized as a successive § 2255 motion. See Gonzalez v. Crosby, 545 U.S. 524, 529-30 (2005). A Rule 60(b) motion constitutes a successive habeas action if it presents "newly discovered evidence" in order to advance the merits of a claim previously denied or attacks the Court's previous resolution of a claim on the merits. Id. As a result, movant may not obtain relief.

Second, the motion is completely meritless under Rule 60(b)(2). Movant has not presented any new evidence. And the state court docket sheets clearly show his conviction was for a felony.

Accordingly,

IT IS HEREBY ORDERED that movant's motion for relief from judgment under Rule 60(b)(2) [ECF No. 26] is **DENIED**.

Dated this 23rd day of June, 2014.

A handwritten signature in cursive script, appearing to read "Rodney W. Sippe", written in black ink.

RODNEY W. SIPPEL
UNITED STATES DISTRICT JUDGE